



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 28, 1994

Ms. Tamara A. Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR94-705

Dear Ms. Armstrong:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26930.

Travis County (the "county") received a request from an attorney on behalf of his client for information about a deputy sheriff. The request was for documents in the deputy sheriff's personnel file and for information relating to complaints of assault and other inmate grievances filed against the officer. You contend that the requested information is excepted from disclosure under section 552.103(a). This exception allows governmental entities to protect their position in litigation by requiring individuals seeking information relating to the litigation to obtain it through discovery rather than through an open records request. Open Records Decision No. 551 (1990) at 3. Section 552.103(a) is designed "to prevent the use of the Open Records Act as a method to avoid discovery rules." *Id.* at 4.

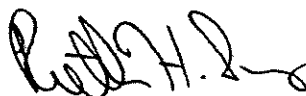
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4. You have submitted information to this office showing that the deputy sheriff, the Travis County Sheriff's Department, and the county are being sued by an inmate for an alleged violation of his civil rights. You also submitted information showing that the inmate is a defendant in pending criminal litigation. Both the civil rights lawsuit and the criminal charges arise from the same incident involving the inmate and the deputy sheriff. You have submitted to this office information that you assert is responsive to the request and also related to both the criminal and civil rights litigation.

We note that you submitted the information you contend is excepted from disclosure in a packet titled "Exhibit A." You also submitted to this office information about the incident that is the subject of the pending litigation, but we assume you are not seeking to withhold those documents since they were not submitted as part of Exhibit A. Our review of the documents in Exhibit A indicates that they are related to the pending litigation. Since you have shown the applicability of section 552.103(a) to these documents, they may be withheld from disclosure.

In making this decision, we assume that the opposing party to the litigation has not previously had access to the documents in Exhibit A. Absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the county's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 26930

Enclosures: Submitted documents

cc: Mr. Leon Grizzard
1012 Rio Grande
Austin, Texas 78701
(w/o enclosures)